LIFE WITHOUT PAROLE FOR JUVENILE OFFENDERS: QUESTIONS OF LEGALITY AND ADOLESCENT CULPABILITY

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Life without parole for juvenile offenders is a controversial issue across the globe. Recently, the United States stands alone as the only country in the world that allows juvenile offenders to be sentenced to life time confinement without the possibility of parole. Furthermore, the U.S. has seen an increase in juvenile waivers and blended sentences, which has resulted in harsher penalties for juvenile offenders who have committed serious and violent crimes.

This analysis examines scientific evidence that shows juveniles are different from adults in terms of brain development, rational decision making abilities, and maturity levels. These findings have questioned the reasoning behind imposing adult punishment on adolescent behavior. This analysis also presents the legal arguments suggesting that juvenile life without parole is unconstitutional and violates the Eighth and Fourteenth Amendments. Arguments for and against life sentences were also presented. This study concludes with a discussion of policy implications, whether the U.S. Supreme Court should abolish juvenile life without parole sentencing practices and explores the possible future direction of juvenile sentencing in the United States.
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CHAPTER 1
INTRODUCTION

Life without Parole for Juveniles

In 2003, Terrance Jamar Graham participated in a robbery of a restaurant at the age of 16. On probation for the robbery, Graham pled guilty in adult court to another robbery and was sentenced to life without parole (Graham v. Florida, 2009). In 1999, at age 13, Lionel Tate beat a 6-year-old girl to death trying to imitate professional wrestling. Tate was tried as an adult and sentenced to life without parole (Tate v. Florida, 1999). In 2000, at age 13, Nathaniel Brazill fatally shot his middle school teacher claiming the gun went off accidentally. Brazil was tried as an adult and sentenced to life without parole (Brazill v. Colorado, 2000).

The Graham, Tate and Brazil cases exemplify the blurring of the line between sanctions reserved for adults and those, traditionally rehabilitative sanctions, reserved for juveniles. In fact, a widespread shift in the theories behind the appropriate responses by law enforcement and the courts to juvenile crime is moving swiftly through the modern juvenile justice system representing a more punitive approach. Since the advent of a separate juvenile court and justice system in 1899, U.S. society has continually struggled with rehabilitation versus juvenile accountability. This struggle is particularly pronounced in cases involving juvenile offenders who commit serious and violent crimes.

The advent of a separate court and justice system designed specifically for juveniles was an indication that society recognized the possibility of diminished
culpability for children and early juvenile courts were operated under the philosophy that juvenile criminals should be rehabilitated, not punished (Massey, 2006).

The juvenile court philosophy of rehabilitation, despite sporadic and generally minimal changes, largely held sway into the 1970s. However, during the 1980s and 1990s, dramatic increases in violent juvenile crime led to a demand for tougher penalties. Not only were more crimes accounted for by juveniles, but the nature of those crimes became more violent and dangerous than had been in the past. The result was a shift in thinking on how to deal with delinquent offenders—a mindset that serious and violent juvenile offenders were inherently dangerous and destined for a life of crime and therefore should be incapacitated. States began to change their laws allowing more discretion to prosecute juveniles as adults, or to impose increasingly tougher sanctions on juvenile offenders, including sentences of life in prison without the possibility of parole. This ushered in a new era of increased juvenile accountability with a philosophy that was much more punitive, especially for serious and violent juvenile offenders. Indeed, in a recent review by Ogilvie, a moving trend was identified which stated: “In recent years, some states have criticized the very purpose of the juvenile system as a rehabilitative process and proposed to replace it with concepts of accountability and proportionality, concepts traditionally associated with the [adult] penal process” (Ogilvie, 2008, p. 297).

With this mindset of increased accountability for serious and violent juvenile offenders, juveniles began to face tougher adult-like punishments. Juveniles were allowed to be transferred to adult court for trial and in terms of punishments, were even allowed to be executed. Although sentencing juveniles to death is no longer
constitutionally permissible (Roper v. Simmons, 2005), juveniles may still be sentenced to lengthy adult prison terms, including life without parole. Massey (2006) discussed the number of how many juveniles are serving life without parole, stating “today, children are not only transferred to and prosecuted in the adult system more readily than before the 1990s, but are also sentenced to its penultimate penalty-life without the possibility of parole. As of 2006, at least 2,225 people in the United States were serving sentences of life without parole for crimes they committed before their eighteenth birthday” (Massey, 2006, p.1).

Today, life without parole is the most severe penalty a juvenile can face for their criminal/delinquent acts. Indeed, the sentencing of youthful offenders to life in prison is not without controversy. The controversial issues presented regarding life without parole for juveniles are two-fold: 1) questions of retribution vs. rehabilitation for juvenile offenders and 2) the legal issues surrounding life without parole for juveniles; specifically, does life without parole for juveniles violate the Eighth Amendment?

Retribution/Rehabilitation

Perhaps one of the most pressing issues regarding the sentencing of juveniles to prison for life without parole is the argument between rehabilitation and retribution. Historically, the juvenile justice system focused on two principles: the individual assessment of juveniles and rehabilitation (Guttman, 1995). Initially, juveniles were denied due process in the juvenile justice system but the major emphasis was rehabilitation and treatment. During this time, individual treatment became the guiding principle for the juvenile system. In summary, the juvenile court was a social services
entity that "provided intelligent assessments of juveniles, and . . . assigned them to programs that were closely related to their needs" (Guttman, 1995).

In the early 20th century, the progressive juvenile court system focused on open-ended, informal, and highly flexible policies to help rehabilitate the deviant (Radzinowicz, 1977). Such reforms reflected changes in the ideological assumptions on the cause of crime and deviance. In short, criminal (or delinquent) behavior was thought to primarily be the product of external forces out of the control of the individual, as opposed to free will or rational choice. Such thinking led to a justice system that removed children from the adult population and reduced the culpability of the juvenile offender, focusing more on reform and preventive measures of rehabilitation (Allen, 1981).

Another ideology related to Progressive reform was the claim that juveniles are more amenable to rehabilitation than adults; therefore, life without parole is too harsh a sentence for someone who has a greater chance at rehabilitation. Additionally, scientific research (Shepard, 2005) has shown that psychological development has attributed adolescent immaturity to two types of deficiencies: cognitive and psychosocial. In summary, research has shown that adolescents do not have the same brain capacity and decision making capability as adults, thus making juveniles less accountable for their actions (Massey, 2006).

In the U.S. Supreme Court decision In re Gault, the juvenile court system was transformed into a much different system from its predecessor of reform. In summary, Gault mandated procedural safeguards in the adjudication of delinquency, which put the focus towards determining the guilt or innocence of the adolescent (In re Gault, 1967).
In contrast to the “Progressive” ideology, the juvenile justice system became focused on prosecuting the criminal element of the minor’s commission of the offense, which over time has evolved to a more punitive and retributive system for violent juvenile offenders (Feld, 1988).

Retribution stems from public fear and the perception of increased juvenile crime. At a time when juvenile crime rates were at their peak in the mid-1990s, public policy makers shifted their goals to deterrence, retribution and incapacitation. Historically, public perception has been a driving factor in the change of juvenile penal policy. As juvenile crime rates increase, society seems less tolerant of claims about rehabilitative potential for youth and more focused on reducing crime and incapacitating juvenile predators (Simmon, 1996).

**Legal Issues**

The main constitutional argument surrounding life without parole for juveniles is that it violates the Eighth Amendment’s prohibition against cruel and unusual punishments. The U.S. Supreme Court in *Roper v. Simmons* (2005) noted three general differences between juveniles and adults that diminished the culpability of juveniles. First, the courts believed that juveniles’ lack of maturity and responsibility diminish their rational decision-making abilities, which causes them to take additional risks. The second difference was that juveniles tend to be more susceptible to negative peer pressure. The third difference relates to the level of understanding and knowledge that juveniles possessed compared to adults (*Roper v. Simmons*, 2005). Based on these aforementioned factors, the Court ruled in this case to abolish the death penalty for
those offenders who committed their crime before age eighteen. Critics have argued that these same arguments apply to life without parole for juveniles.

Currently, the U.S. Supreme Court has agreed to hear the cases *Graham v. Florida* and *Sullivan v. Florida* which explore whether the Eighth Amendment’s ban on cruel and unusual punishment prohibits the imprisonment of a juvenile for life without parole. The petitioners for these cases argue that the State of Florida has inappropriately tried and convicted adolescents in adult court resulting in life without parole sentences. The petitioners argue that over time the boundaries between juvenile and adult offenders has become blurred and the once protected juvenile class of offenders has become blended into the adult system.

**Overview**

The purpose of this thesis is to evaluate the social and legal issues surrounding life without parole for juveniles. This thesis examines the history of the juvenile legal system, with a focus on changes that have come with regards to the treatment of juvenile offenders culminating in life sentences for those convicted. In short, it explores the blurring of the line between juvenile and adult justice since the advent of the nation’s first juvenile court and justice system. It also examines the current legislative ideology and analyzes current U.S. Supreme Court decisions that will ultimately have a significant impact on whether the U.S. criminal justice system can continue to impose adult sentences on juvenile offenders.

In Chapter 2, this thesis examines the history of the juvenile system and in particular, the changing status of juvenile offenders in the juvenile system. A significant
focus will be on the blurring of the historical boundary between juvenile and adult justice. Indeed, with the exception of the death penalty, perhaps no other sanction is indicative of the blurred line between juvenile and adult justice than life without parole.

Chapter 3 examines research conducted on whether juveniles have diminished capacity to fully understand the consequences of their choices. Evidence is explored regarding whether juveniles are more amenable to rehabilitation and whether integration back into society is possible for such young offenders. Scientific evidence is evaluated regarding the argument that juvenile brains are not fully developed to the capacity of adults which affects their capability. Scientific data is used to show the psychological and neurological differences between adolescents and adults. The focus of this comparison is to show that juvenile brains have not fully developed which questions the justification for imposing adult sentences on adolescent behavior.

Chapter 4 then evaluates precedent cases for the juvenile justice system including juvenile rights and due process. The current cases before the U.S. Supreme Court are examined and the arguments for both the petitioner and the states opposing the motion are discussed.

Chapter 5 concludes this thesis with a summary of research, legal arguments and questions surrounding life without parole for juveniles. The future direction of life without parole depends heavily on the outcome of the pending U.S. Supreme Court cases. As such, a significant portion of this final chapter examines the implications of these decisions relative to the future of treating juveniles as adults through the sentence of life without parole.
An analysis of juvenile issues for life without parole reveals opposing views and challenges: is life without parole for juveniles justified through retribution or is life without parole for juveniles considered excessive punishment and a violation of U.S. Constitutional rights? This analytical thesis explains the opposing views of the issue focusing on a historical perspective of the juvenile justice system, blended sentencing and waivers, and precedent Court cases that have presented arguments for reasons to abolish the juvenile death penalty. Finally, this analytical review evaluates the current U.S. Supreme Court case that will ultimately decide the future of life without parole for juveniles.
CHAPTER 2
A SEPARATE JUVENILE COURT AND JUSTICE SYSTEM

Prior to the nineteenth century, children were generally treated as adults in all aspects of social life. This was especially the case involving matters of crime and punishment. Wayward youths found themselves in the grasps of a punitive society whose mercy was rare and punishments severe. During this era there was little or no consideration given to a child’s young age, diminished capacity, potential for rehabilitation, or supposed inability to make rational decisions. These notions were for all intents and purposes, non-existent.

It was not until the late 19th and early 20th centuries that the concept of juvenile accountability for their actions and the differences between juveniles and adults began to emerge. Indeed, newly developed juvenile courts recognized that juveniles may not possess the capacity to think like an adult and would arguably lack the knowledge or understanding of what they were doing. Most criminal statutes require that the state prove “mens rea” (i.e. that a person has acted knowingly, purposely or recklessly in the commission of a crime). Juvenile courts began to recognize that juveniles as a whole did not possess mens rea. It was this change in ideology that carved the path of juvenile justice reform (Feld, 1991).

History of Juvenile Courts

In 1899, the first juvenile court was established in Chicago, Illinois, stemming from the Progressive Reform Movement. The creation of this court was in response to the growing number of juvenile cases involving minor infractions and truancy. The newly
developed juvenile court system laid a clear distinction between adult and juvenile offenders. Such a distinction led to many changes including the recognition of diminished responsibility due to young age and a juvenile court and justice system more concerned with rehabilitation than punishment. Along with these broader changes came massive change in the treatment of young offenders, now referred to as delinquents instead of criminals, including a focus on community sanctioning instead of incarceration and a multitude of euphemisms to protect the delinquent offender from criminal stigmatization. The theory was that by preventing the stigma associated with juveniles being labeled as criminals, the juvenile courts would allow them to be rehabilitated and receive a fresh start back into society (Ferdinand, 1991).

"Parens Patriae"

The foundation of the world’s first juvenile court system was based heavily on the doctrine of parens patriae. The literal definition of this doctrine is “parent of the country” or “state as parents” and it provided authority to the state as guardians of persons under “legal disability,” including juveniles (Guttman, 1995). The first notion of this law was recorded in 1610 from King James I and has evolved over the centuries to granting the absolute rights to the state in cases involving children and incapacitated adults (Bennett, 1996).

In adopting parens patriae as its philosophical and operational foundation, early juvenile courts were envisioned as a new system that would provide discipline, order, and humanity to the treatment of young offenders who were not entirely responsible for their actions. This new forum would provide treatment to the special needs of children
with a focus on dealing with the social and family conflicts that accompany family/child problems. The individual treatment of juvenile offenders became the focus of the juvenile justice system. The model for this system became the “rehabilitation of children through treatment, supervision and confidentiality” (Guttman, 1995, p.2).

Positivist Revolution

Prior to the nineteenth century, little attention was paid to the causes of crime and juvenile delinquency. Theories of the 18th century generally reflected that of the classical school. According to the classical school, crime in specific and deviance in general was believed to be the product of free will and it was recognized that all members of society were capable of making rational decisions. Under this thinking, classical school theorists believed that the proper way to deal with criminals was to impose a proportionally harsh sentence to "unwill" or deter his/her propensity for crime (Feld, 1991, p.691).

In the latter part of the 19th century emerged a new way of thinking about crime and punishment which challenged the rational-based view of criminality. Positivists believed crime was not the product of complete rationality and free will, but rather, of external forces beyond the control of lawbreakers. Some of these external factors include the influence of biological, psychological, sociological, and cultural traits and physical environments. The world’s first juvenile court and justice system was heavily influenced by Positivist thinking and was developed with non-punitive and therapeutic methods as a way to address juvenile delinquency. This new system provided a clear line between juvenile and adult offenders. As a result, two distinctly different methods
for dealing with juvenile delinquency versus adult criminality emerged—one system focused on rehabilitation and the other on punishment and accountability (Trojanowicz & Morash, 1987).

The Blurring of Juvenile and Adult Justice

Legal Rights for Juvenile Delinquents

Prior to 1899, juveniles generally received the same criminal proceedings as adults. As a result, juvenile offenders faced adult sanctions for their misdeeds. It was this harsh and unbalanced treatment of adolescents that brought to light the need for reform. Judges and the reformers of that time period recognized the need for another option whereby juveniles would still be held accountable for their actions, but not excessively punished (Bernard, 1992; Platt, 1977).

The reasoning behind the creation of a separate court system for adolescents was primarily based on the differences between children and adults. In short, the cause of juvenile delinquency was primarily a product of environment, not choice. Based on this way of thinking, juvenile courts shunned due process protections for adolescents. Such protections, according to proponents of the juvenile court, were unnecessary because the purpose of the juvenile court was to treat and rehabilitate children, rather than punish them (Bernard, 1992).

From 1899 to the 1960s, the structure of the juvenile courts experienced few changes. The focus was the treatment of juvenile offenders by improving his/her environment, rather than imposing punitive sanctions. The new court empowered the authority of the states to intervene and act in what the courts believed to be the best
interest of the child if the natural parents were incapable or unwilling to reform the juvenile (Feld, 1999).

With this new authority, the courts had complete autonomy to impose juvenile sanctions with little or no judicial oversight. Juveniles were afforded few rights and due process was not a concern. Over time, however, this benevolent system of juvenile justice began to experience problems and complaints regarding the treatment of children emerged. These problems became evident in several U.S. Supreme Court cases during the 1960s and 1970s—cases which highlighted the problems in juvenile courts. Perhaps the best indicator of the issues faced by juvenile courts was highlighted in the U.S. Supreme Court case of *In re Gault* (1967). In this case, 15-year-old Gerald Gault was arrested, tried and convicted without being afforded any procedural rights that were guaranteed by the U.S. Constitution to adults (Mlyniec, 2008).

The Supreme Court, in an 8-to-1 decision, ruled that children subject to juvenile court proceedings are entitled to due process protections. Among other protections, the Court provided juveniles the assistance to legal counsel, the right to confront and cross-examine accusers, and the protection of the privilege against self incrimination. In the Court’s opinion, Justice Abe Fortas stated that “neither the Fourteenth Amendment nor the Bill of Rights is for adults alone” and that “the condition of being a boy does not justify a kangaroo court” (*In re Gault*, 1967).

In the aftermath of *Gault*, juvenile courts were now required to provide the same legal protections that adults receive. One unintended consequence of this decision, however, was the first step in the adultification or criminalization of juvenile courts. Over the ensuing years, state legislatures began to enact legislation that further criminalized
juvenile courts. For example, state legislation has provided juvenile courts the ability to supervise youthful offenders well into adulthood. Under California law, for example, a juvenile can remain under the jurisdiction of juvenile correctional authorities until the age of 25—an initial but clear example of the blurring of juvenile and adult justice boundaries (Steinhart, 2008).

Under the original structure of the juvenile court system, there was a clear and established line between juvenile/adult offenders and sentences. Since the ruling in Gault, the current juvenile system has evolved, with individual jurisdictions slowly blurring the lines between juvenile and adult justice. Perhaps no other change in juvenile justice demonstrates this blurring better than the use of adult court waiver provisions, and more recently, blended sentencing. These two changes to traditional juvenile court structures are explored below with a focus on the blurring of juvenile and adult justice.

Waiver Provisions

From the earliest beginnings of a separate juvenile court and justice system, there have always been mechanisms to treat certain juvenile offenders like adults. Yet, with the advent of a separate juvenile court, treating juvenile offenders like adults was a practice that was used few and far between. Over time, however, and mostly in response to increases of violent juvenile crime in the early 1990s, the boundary between juvenile and adult justice began to blur. Perhaps no other change before it signified the blurring of juvenile and adult justice more than waiver to adult court. Although numerous forms of waiver exist today, the common ground they all share is
that they function as a mechanism whereby juvenile delinquents may be transferred or waived to adult court to face punishment as an adult for committing “adult-like” crimes, such as murder, aggravated assault and sexual assault.

Although juvenile courts have always had methods by which exceptional delinquents could be treated like adults, such treatment was generally not used often. However, by 1992, most states had passed new laws which significantly expanded and simplified waiver provisions. Such laws were argued to provide juvenile courts more flexibility in dealing with juvenile offenders who were too serious, violent and chronic for juvenile courts (Snyder & Sickmund, 2006). Because of this legislative activity, a direct result from the increase in violent crime committed by juveniles, from 1985 to 1994, adult courts received a near 50% increase of juveniles being transferred to adult courts (Griffin, 2008). While waivers to adult court are still rare compared to the total number of delinquency cases facing juvenile courts, waivers to adult courts increased precipitously in the 1990s (Griffin, 2008).

Today, there are a number of different methods by which a juvenile offender can face adult court via waiver processes, providing further evidence to the blurring between juvenile and adult justice. Indeed, every state today has at least one waiver provision whereby a juvenile offender can face adult court for his or her actions—many states have multiple different types of waiver provisions (Griffin, 2008). These methods of adult court waiver include: (1) judicial waiver, (2) legislative waiver, (3) prosecutorial waiver, and (4) presumptive waiver (Rose, 2003).

The first method, judicial waiver, is the decision to transfer a juvenile offender to the adult court by the presiding juvenile court judge. The judge must conduct a full
investigation into the particular circumstances of the case and the mitigating factors surrounding the juvenile’s situation. The factors to be considered by the judge in deciding whether to transfer a juvenile to adult court vary from state to state. However, most state judicial waiver statutes have been created under the guidance of *Kent v. United States* (1966). In *Kent v. United States*, the Court outlined several important factors to be considered in the decision to transfer a juvenile to adult court, including: the seriousness of the offense, community risk, the merit of the complaint, the sophistication and maturity of the juvenile, the criminal history of the juvenile, and likelihood of rehabilitation (*Kent v. United States*, 1966).

The second type of transfer statute is legislative waiver, also called statutory exclusion. Legislative waiver mandates a juvenile offenders transfer to adult court when certain elements are met that trigger the statutory provision. This type of waiver stems from mandatory minimum legislation. State legislative waiver provisions are usually triggered based upon minimum offense and age requirements. Provided the juvenile delinquent commits a certain offense and is of a certain age, the waiver to adult court is automatic. Since the early 1990s, many states have increased the number and types of offenses that would be eligible for legislative waiver and have decreased the age requirement of the juveniles who may be transferred (Rose, 2003).

The third transfer statute is prosecutorial waiver. This waiver method provides the prosecutor with the power to file charges directly with the adult court at his or her discretion, removing any type of checks or balances in the system as exist in judicial or legislative waiver. This type of waiver has received the most criticism and is the least common because of the limited oversight provided for a prosecutor who may abuse this
authority. Under a prosecutorial waiver system, the juvenile court and criminal court possess concurrent jurisdiction. Only 15 states currently utilize a prosecutorial waiver statute. Within these states, most have provided prosecutors with limited discretion to certain enumerated offenses (Griffin, 2008).

The fourth transfer relates to presumptive waiver which has currently been enacted in 15 states. Presumptive waiver dictates that with certain types of offenses, the burden of proof is shifted to the juvenile to prove he or she is amenable to rehabilitation and hence, suitable to remain in juvenile court. The long-term consequences of most waivers have resulted in longer sentences, juvenile abuse in the adult system, and an increase in juvenile suicides who are serving time in adult systems (Griffin, 2008).

Currently, a total of 45 states have discretionary waiver laws. Most states set a minimum threshold for waiver-eligibility that requires a minimum age, a specified type or level of offense and a significant offending history showing previous delinquency. In some states, the prosecutor is able to waive practically any juvenile case. Nationally, the portion in which prosecutors seek waivers is not currently tracked, however, only 1% of petitioned delinquency cases result in judicial waivers each year. It should be noted, however, that many juveniles are waived into the adult system through other mechanisms outside of the petitioned waiver system (Griffin, 2008).

Blended Sentencing

While adult court waivers have been a popular option in dealing with the most serious and violent offenders, research has shown that age boundaries can become a
stumbling block in targeting the most violent offenders. Adult court waivers cannot be used on delinquents who fall under the statutorily defined minimum age in states that have enacted minimum age boundaries. Some evidence has also suggested waived delinquents may receive a lesser (or less “harsh”) sentence compared to a delinquent sentenced in juvenile court charged with similar offenses. The most pressing issue with adult waivers is that they provide little hope in the way of rehabilitation (Burrow, 2008a; 2008b; Redding, 2008; also see, generally, Bishop, 2000; Fagan, 1996; Feld, 1999; Fritsch, Caeti, & Hemmens, 1996; Howell, 1996; 2003, Mears, 2003; Myers, 2003; Redding, 2003).

The solution to the aforementioned problems of adult waivers was the enactment of “blended sentencing” statues. Blended sentencing is a term defined by state laws which allow delinquent offenders, most commonly serious, violent and/or chronic offenders, to be sentenced within a juvenile or adult court and receive either juvenile or adult sanctions. Currently, 32 states have provisions for blended sentencing (Griffin, 2008).

There are two types of boundary blurring between juvenile and adult offenders within blended sentencing legislation. The first, juvenile blended sentencing, enhances the jurisdictional and sanctioning authority of the juvenile court judges by empowering them to impose juvenile and adult sanctions on a juvenile offender. These sentences also allow the juvenile court judge to suspend the adult portion of the blended sentence if the juvenile offender shows progress towards rehabilitation. The second type, criminal blended sentencing, is similar to juvenile blended sentencing, except under these statutes adult court judges are authorized to impose a juvenile/adult disposition on a
previously adult-court waived juvenile, with the authority to suspend the adult imposed portion of the blended sentence (Griffin, 2008).

While states have varied in blended sentencing legislation, most statutes have targeted those juvenile offenders who have avoided the grasps of adult waiver provisions and continued to plague society through the commission of serious and violent offenses. Indeed, some have defined blended sentencing as a “third justice system” that is able to deal with delinquents who were outside the statutory boundaries of adult court waivers but were too serious or otherwise unfit for traditional juvenile court sanctioning (Dawson, 1988; Mears, 1998).

While some relished in the idea of juvenile rights as being a positive step in juvenile reform, the historic case of *In re Gault* had long-term ramifications that significantly changed the face of the juvenile justice system. Simply put, “injecting rights into the historically informal juvenile court with its singular rehabilitative mission ran the risk of rendering the courts virtually indistinguishable from the criminal justice system” (Sandberg, 2007, p.58). Ultimately, *Gault* was the first step in the process which blurred the boundaries between juvenile and adult justice and opened the door for other changes such as adult court waiver, and more recently, blended sentencing. More recently, other changes indicative of the blurring between juvenile and adult justice have created controversy involving the treatment of juvenile offenders.

The Ultimate Blurring of Juvenile and Adult Justice: Death and Life without Parole for Juveniles

A historical examination of the evolution of the juvenile court system has shown a gradual blurring of the lines between juvenile and adult justice. The granting of due
process rights, adult waivers, and blended sentences have all indicated the blurring of juvenile and adult justice. Beyond these changes, capital punishment and life without parole for juveniles, although applied rarely, are indicative of the ultimate disintegration of the line separating juvenile from adult offenders.

Although the 2005 Court case of *Roper v. Simmons* (juveniles cannot be sentenced to death and executed for crimes committed prior to age 18) clearly defined the differences between juveniles and adults for justice purposes, the courts have seen an increase in life without parole convictions for serious and violent juvenile offenders. The American justice system continues to see an increase in legislative enactments that make it easier to convict serious and violent juvenile offenders to life without parole sentences. However, life without parole for juveniles is currently under attack in the legal system with cases pending in the U.S. Supreme Court (Rowe, 2006).

Today, most states have modified their traditional juvenile court structures and have added and expanded more punitive measures; including life without parole for juveniles. In contrast to its predecessor of the preventive and rehabilitative model, our current juvenile justice system has focused more on accountability and punishment to address juvenile delinquency. This is especially the case for the smaller proportion of serious and violent juvenile offenders. The next chapter examines the various arguments and issues surrounding life without parole for juveniles. These include: 1) juvenile offenders are more amenable to rehabilitation than adults, thus life without parole sentences are too severe; 2) juvenile offenders have a diminished capacity in making rational decisions, including questions of brain development; and 3) whether life without parole violates the Eighth Amendment’s cruel and unusual punishment clause.
CHAPTER 3

DEFINING THE ISSUES FOR LIFE WITHOUT PAROLE FOR JUVENILES

Over the last two decades, the general public has devoted specific attention to the increase in serious and violent juvenile offenses. Public outcry has resulted in significant changes for the juvenile court system. This is especially the case for the small but problematic number of the most serious and violent delinquents (Wayne, 1998). Indeed, legislative activity concerning serious and violent delinquents has made juvenile and adult court systems seem indistinguishable. The variety of adult court waiver mechanisms and blended sentencing schemes, for example, have paved the way for life without parole sanctions for juvenile offenders who have committed serious and violent crimes. Moreover, new laws have been enacted which have lowered the minimum age and increased the number and types of offenses that would make a juvenile offender eligible for a life without parole sentence (Massey, 2006).

As a result of the public demand for tougher penalties for juveniles (stemming from the violent crime increase of the 1980s and 1990s), policy makers have made the sentence of life without parole more available for delinquent offenders. Since the Court’s ruling in *Gault* in 1967, the juvenile justice system has experienced unintended consequences of a punitive and retributive response, as opposed to the previous rehabilitative approach. One by-product today is that only eleven states and the District of Columbia prohibit, or choose not to practice, life without parole for juveniles (Leighton, 2007).

Of all of the juveniles who have received life without parole, all were convicted of murder. For example, in Florida, a 14 “year”-old boy was convicted of life without parole
because he was present during the commission of a violent murder of an elderly woman by some of his friends. In another case, a 14 “year”-old girl was convicted of life without parole because she had been drinking and a man was shot in the presence of her friends (Olgilvie, 2008). These cases provide an example of how adolescents can be influenced through peer pressure to participate in criminal activity and receive a life sentence even though they were not the ones that actually committed the crimes.

Another factor in juvenile delinquency is neurological differences between juveniles and adults. Scientific research has shown that neurological developments and age maturity show a distinct difference in understanding between children and adults, thus causing an adolescent to make irrational decisions that would normally not be made by adults (Scott, 2006; Locke, 1979).

### Difference between Juveniles and Adults

Scientists have identified differences in psychological and neurological developments between juveniles and adults. The differences, according to some critics of life without parole for juveniles, undermine the legitimacy of imposing adult sanctions on juvenile offenders. The U.S. Supreme Court held in *Roper v. Simmons* (2005) that children younger than 18 years of age were unable to make rational decisions and cited societal recognition of this concept through the prohibition of children being able to vote, to serve on juries, or to marry without parental consent (Massey, 2006). The Court’s majority argued that adolescents do not possess full emotional, intellectual, or biological maturity to be fully culpable for the violent acts they commit and, as a result the execution of juveniles, is considered cruel and unusual punishment. The key piece of
evidence in the Simmons case was new brain imaging technology that showed adolescent brains are not as fully developed as adults. The same arguments of brain development in adolescents are currently being argued in the U.S. Supreme Court to abolish life without parole for juveniles (Graham v. Florida, 2008 and Sullivan v. Florida, 2008).

**Diminished Culpability**

Criminal responsibility and moral blameworthiness rely on cognitive and volitional competence. Scientific research has suggested younger offenders are not as culpable as adults because they have not fully developed moral norms, developed sufficient empathic identification with others, and have not had sufficient opportunity or time to mature to control their actions (Scott, 2006).

**Immaturity**

Adolescents tend to lack, or possess to a smaller degree, the normative competence for responsibility (Steinberg & Scott, 2003). Responsibility of adolescents can be derived from the notion of agency and individual accountability (Locke, 1979). In An Essay Concerning Human Understanding, John Locke (1979) discussed the difference between persons and men (or, in other words between juveniles and adults) (Locke, 1979, pp. 8-26). Locke claims that adults are accountable in law and morality because they are responsible for their actions. Locke defines a person responsible for their actions as an agent who possesses normative competence and capacities for normative control. Locke states: “Responsibility requires that agents possess normative
competence and capacities for normative control - they must be able to recognize reasons for and against action and be able to regulate their actions in accordance with this normative knowledge” (Locke, 1979, p. 9).

Immaturity involves a form of reduced or diminished normative competence. One of the main components of normative competence is impulse control. Impulse control is defined as “the ability to refrain from acting on one’s good-independent desires that is necessary to being guided by one’s good-dependant desirers” (Locke, 1979, p.11). The gradual development of this competence is what defines normal normative progress through childhood and adolescence to maturity. Many have argued that a reduced normative competence of juveniles shows a distinct difference of maturity between adults and adolescents, thus justifying reduced punishment for juvenile offenders (Brink, 2004). In short, maturity takes time to develop and juveniles have not had sufficient opportunity to do so, and thus are not as culpable as adults.

**Peer Pressure**

Substantial research evidence has supported the claim that juveniles are more oriented toward peers and more responsive to peer influence than adults (Mcnamee, 2006; Sprinthall & Collins, 1995). Several studies have shown that peer pressure influence, specifically juvenile pressure to engage in antisocial behavior, peaks at approximately age 14 and slowly declines during adolescent maturity (Sprinthall & Collins, 1995). Increased susceptibility to peer pressure can result from a lack of parental authority or guidance, the intensity of pressure that teens impose on each other, and the fact that some antisocial behavior may result in a higher status among
their peers (Steinberg & Silverberg, 1986). Some studies have shown that adolescent behavior is in direct response to peer pressure that would cause a juvenile to take risks they might otherwise avoid (Costanzo & Shaw, 1966). Indeed, research has demonstrated juveniles are much more susceptible to peer pressure than adults (Steinberg & Scott, 2003), thus defining a clear distinction that adolescent peer pressure should be factored when mitigating decisions for juvenile sentencing.

Justice Kennedy, in *Roper v. Simmons* (2005), noted that adolescents are both less likely to perceive risk and less risk-averse than adults. Evidence of this can be shown by the fact that juveniles typically drive faster, have more unsafe sexual encounters, drink more excessively, and commit more crimes than adults. These psychosocial and emotional factors of peer pressure contribute to poor judgment in adolescents and impact juvenile choices to engage in criminal activity (Scott, 2006).

*Brain Development*

Historically, scientists believed a person’s brain stopped developing at the age of 12 (Wallis, 2004). Technology has proven otherwise through the use of magnetic resonance imaging (MRI), which has provided evidence that the brain continues to develop throughout the adolescent phase (Bennett & Abigail, 2006). Several studies have shown behavioral developments in emerging adults (Arnett, 2000). In 2000, Jeffrey Arnett’s research concluded that emerging adulthood is a period between adolescence and adulthood which is “theoretically and empirically distinct” (Arnett, 2000; p 469). Thus we find empirical evidence that clearly separates juveniles and adults in their capacity to choose and make rational decisions. Although most states
have recognized the age of 18 as a marker for the end of adolescence and the beginning of adulthood, research has shown some individuals may not reach that level of maturity until well into their twenties (American Academy of Pediatrics, 1999). For example, the American Academy of Pediatrics has identified several factors that would cause an adolescent to not reach full maturity until their twenties, including abuse and neglect as an adolescent, sexual or physical victimization, and lack of adult supervision and/or parental involvement (American Academy of Pediatrics, 1999).

The use of magnetic resonance imaging (MRI) technology has allowed scientists to quantify brain development. MRI research has shown which regions of the brain are activated by proposed questions or scenarios as an individual performs a task inside the MRI scanner (Wallis, 2004). One example includes research that was performed on both juveniles and adults resulting in very different patterns of brain activity. Participants were shown pictures of adult facial expressions. In this study, scientists were able to demonstrate that adults correctly identified the facial expressions by relying on their prefrontal cortex (the area of the brain that involves judgment, reason and planning). In contrast, adolescents in this study struggled to determine correct responses. The researchers concluded that adolescents relied mostly on the amygdale (the region of the brain most associated with gut reactions, instincts, and emotional responses). This study found that as juveniles developed and aged, they came to rely more on the prefrontal cortex and less on the amygdala (Wallis, 2004).

This study provides insight into the scientific evidence that shows a clear distinction in how juvenile brains differ from adults. The Supreme Court has recently considered the cognitive development of juveniles in *Roper v. Simmons* (2005). The
context of this legal argument has demonstrated the Court’s trend in using psychological, behavioral and cognitive-brain development research in its determination of distinguishing adult and juvenile culpability. Currently, opponents of life without parole are using this same finding to argue that juveniles should not have life without parole sentences imposed upon them because of the established court precedent recognizing juvenile cognitive development (Graham v. Florida, 2008 and Sullivan v. Florida, 2008).

Many scientists agree that adolescents take more risks in part because of an immature prefrontal cortex. Scientific evidence has shown that the prefrontal cortex does not fully develop until the mid-20s (Gogtay, 2004). In a more detailed study of the brain, scientists have found that an important part of brain development refers to myelination. This is the process by which myelin, a fatty white substance, forms a sheath around the axons of neurons inside the brain when they fully develop (Bennett & Baird, 2006).

Research has concluded that myelination dramatically improves the ability for an axon to conduct a signal. This shows that an adult brain clearly has the capacity to function in a rational manner, as opposed to a less developed brain which prohibits an adolescent from fully being able to process or understand all of their choices and decisions (Bennett & Baird, 2006).

Environmental changes have also been identified as contributing to brain alterations in emerging adults. In one study, researchers at the Laboratory for Adolescents Studies at Dartmouth College studied brain development among a group of college freshmen. According to the research, it was determined that college life contains “cognitive, social and emotional challenges that require adaptation” (Bennett & Baird,
During the study, freshmen students between the ages of 17.9 and 19.8 years were provided an MRI scan at the beginning and end of the six month interval. The results indicated regionally specific changes in brain structure that were due to myelination, which also has been linked to environmental provocation (Bennett & Baird, 2006). In summary, this study found that environmental changes have an effect on the decision making process which contribute to the emotional development and behavioral response of adolescents.

In *Roper v. Simmons* (2005), the U.S. Supreme Court abolished the death penalty for offenders under the age of 18. A key argument in *Simmon’s* defense was evidence presented suggesting that the regions of the brain responsible for decision making and impulse control are not as well developed in adolescents as in adults, thus making juveniles less culpable the crimes they commit. This same argument is currently being debated in front of the Court. The argument proposed is that juveniles should not receive life without parole because their cognitive abilities and brain developments are clearly different and less developed than adult offenders. Legal precedents have clearly shown the Court’s understanding of the separation between adults and juveniles (*Roper v. Simmons*, 2005). Indeed, it is this interpretation that may convince the Court to change the course of the juvenile court system by prohibiting life without parole sentences for juveniles.

**Juvenile Rehabilitation**

As the juvenile justice system interprets some of the differences between adult and juvenile cognitive abilities, juvenile courts must also evaluate the delicate balance
between juvenile punishment and rehabilitation. Currently, the juvenile court systems have enacted legislative sanctions that have shifted the focus from rehabilitation to punishment. For example, several states have changed the legislative verbiage of the stated purpose from an emphasis on rehabilitation to a focus on community safety, punishment and accountability (Feld, 1997). Between 1992 and 1997, state legislatures enacted laws that dramatically increased the punitive sanctions for juvenile offenders and increased the amount of waivers into the adult court systems (Feld, 1997). Indeed, new legislative sanctions aimed at reducing rehabilitative opportunities have further distanced the rehabilitative ideology in favor of a much more punitive juvenile court system (Park, 2008).

_Treatment vs. Punishment_

Since the 1990s, the Court’s influence has shifted the juvenile system’s focus from rehabilitation to punishment for the most serious and violent juvenile offenders. This influence has come from the introduction of procedural protections and constitutional rights applied to juveniles from the 1960’s. In response to the increase in violent crimes by juveniles, states have implemented tougher sanctions shifting the focus from rehabilitation to punishment.

Rehabilitation of juveniles is based on the premise that youthful offenders lack the moral maturity of adults and are not fully culpable for their actions because they have a diminished capacity. Rehabilitation proponents believe juvenile delinquency is primarily caused by influences external to the adolescent, such as poverty, neglect, abuse and lack of parental involvement. The rehabilitation model holds that the proper
societal response to juvenile delinquency is not punishment, but rather rehabilitative treatment. While most states have rehabilitation as the primary goal in their juvenile codes, legislative enactments of more severe punishments, including life without parole, have slowly eroded the rehabilitative ideology (Forst & Blomquist, 1991). This is particularly true for serious and violent delinquents where punishment, not rehabilitation in the traditional sense, has emerged.

Punishment is generally imposed for the purposes of deterring crime, incapacitation of the offender, and retribution for the crime committed. The once rehabilitative juvenile justice system began to implement more punitive goals in response to public opinion concerning the increase in juvenile violent crime. The increase in juvenile punishment first emerged in the 1960’s when the Courts began to acknowledge that much of the juvenile sanctions for treatment, were in fact punitive in nature. Based on these recognitions, the Courts implemented a variety of procedural protections including the right to counsel, cross-examination, and the proof beyond a reasonable doubt standard associated with adult criminal trials (Sheffer, 1995).

History has shown that the juvenile justice system had once championed the cause for helping the wayward child (Park, 2008), but has now evolved into a juvenile criminal punishment system which has taken away many opportunities for juvenile rehabilitation. The first goal of punishment was designed to protect society and deter recidivism. Deterrence and incapacitation have not always been the focus of the juvenile justice system, but have evolved over the decades into the primary goal and focus of juvenile sanctions for the serious and violent delinquent.

The second goal of punishment is retribution. The theory of retribution is that
punishment is not for the deterrence of crime or to rehabilitate the offender, rather the sole reason for punishment is because the offender deserves it. Many states have begun to adopt a more “retributive” goal for crime punishment. Some states revised the juvenile court purpose clauses in the 1980’s to reflect a focus away from rehabilitation and towards public safety, punishment and individual accountability (Feld, 1988) This type of wording in state juvenile justice purpose clauses is even more prevalent today (Hemmens, Fritsch, & Caeti, 2007). Life without parole sentences for juveniles affords no chance for rehabilitation or reintegration back into society. Indeed, new legislative sanctions have eroded and prevented many violent youth offenders from receiving proper treatment through rehabilitation programs, thus increasing the recidivism rate, crime rate, and prison population. Aside from issues of punishment, another argument against life without parole concerns the legal issues that challenge the constitutionality of the life sentence for adolescents.

Murder and violent crimes are serious offenses committed at any age, however, previous discussions have been addressed in this thesis that clearly show adolescent diminished capacity should result in a less severe form of punishment (Scott, 2006). Since the 1980’s and 1990’s, legislators have shifted the focus from rehabilitation of juveniles to a “lock them up and throw away the key” mentality. Lengthy adult prison sentences mean juveniles have little or no access to rehabilitative programs. The juvenile system was originally created to meet the individual needs of the adolescents, clearly recognizing the distinction between juvenile and adult offenders. The juvenile court system was also designed to remove the stigma of a juvenile criminal conviction focusing on their re-integration as a productive member of society. If legislative trends
continue towards a more punitive process critics may argue that we will see an increase in recidivism, an increase in incarceration costs, and an overall negative effect on society (Scott, 2006).

Currently, harsher punitive sanctions are being challenged in the Court as unconstitutional. The U.S. Supreme Court first recognized a categorical exemption from the death penalty for juveniles in 1988 in Thomas v. Oklahoma. In this case, the Court set aside a death sentence imposed on a 15 “year”-old offender. The Court applied the “evolving standards of decency” rationale in this case and found the nation did not favor the execution of any offender under the age of 16 at the time of the crime. In 2002, the Court exempted the mentally retarded from the death penalty in Atkins v. Virginia. The Court held mental retardation diminishes personal culpability such that the death penalty is an excessive punishment for that category of offenders.

The most recent decision from the Court was in Roper v. Simmons in 2005. This decision used much of the same rationale and arguments as in Thomas v. Oklahoma (1988), but the result was prohibiting the execution of individuals under the age of 18 at the time of the offense. It was this same case that has opened up the door for current debate within the U.S. Supreme Court as to whether life without parole for juveniles should be prohibited using the same rationale as excessive punishment and diminished capacity (Graham v. Florida, 2008 and Sullivan v. Florida, 2008).

Historically, the Court has mandated procedural changes for the juvenile court system leading to the current challenge of whether to abolish life without parole for juveniles; including, due process requirements (Kent v. United States, 1966), constitutional rights afforded to juveniles (In re Gault, 1967), a juvenile’s guilt to be

While we have focused on moral arguments and diminished capacity as reasons for prohibiting juvenile life without parole, the strongest argument that may very well overturn the existing juvenile life without parole convictions are the legal arguments currently being presented in the Courts (*Graham v. Florida*, 2008 and *Sullivan v. Florida*, 2008). In Chapter 4, the precedent cases that have changed the rules for the juvenile justice are examined. U.S. Supreme Court cases will be examined including rights for juvenile defendants, due process obligations, and death penalty prohibition for juvenile offenders. The current cases being argued before the Supreme Court are examined and the arguments for both the petitioner and the states opposing the motion are discussed.
The juvenile justice system has seen many changes since its inception in the early 1900s. Most of the changes have stemmed from U.S. Supreme Court decision-making in cases that have mandated a number of procedural requirements in the adjudicating and disposing of juvenile delinquency cases. One of the first significant cases to cause major changes in the juvenile justice system was *Kent V. United States* (1966).

Morris A. Kent, Jr., first came under the authority of the Juvenile Court of the District of Columbia in 1959. At that time, Kent was 14 years old and was apprehended as a result of several burglaries and an attempted purse snatching. He was given probation and placed into the custody of his mother. On September 2, 1961, a woman was robbed and raped in her home, and the latent fingerprints found in the apartment were matched to Kent. During this time period Kent was 16 years old and still under the jurisdiction of the juvenile courts. Kent was still on probation as a result of the 1959 proceedings and was taken into custody by the police. During his time in custody, Kent was not advised of his right to counsel, he was not arraigned by a court judge during the week of incarceration, and was not afforded due process rights that would have been given to an adult.

The petitioner counsel filed a motion for a hearing on the question of waiver jurisdiction from the juvenile court system to the adult courts. The petitioner argued that Kent suffered from severe psychopathology and argued that access should be given to
Kent’s social service file to assist counsel with effective assistance and representation. The juvenile court judge held no hearing for these motions and did not confer with the petitioner or counsel. The juvenile court judge ordered, after a full investigation, that Kent be waived from the juvenile court system to adult court. Kent was sentenced to a 90 year term upon conviction (*Kent v. United States*, 1966).

In *Kent v. United States* (1966), the petitioner argued that Kent’s detention and interrogation were unlawful. The petitioner argued that the police failed to notify his parents of the arrest, deprived him of his liberty for a week without a determination of probable cause, and interrogated by him without the consent or knowledge of a parent or counsel. In summary, Kent was denied his due process rights during the course of the investigation and court proceedings. As a result of this case, new procedural mandates requiring due process rights were given to the police and the juvenile court system, upon apprehension of juveniles suspected of serious offenses. The Court also found that the waiving of jurisdiction to the adult court was invalid and mandated due process requirements and fairness in determining waiver of jurisdiction for juvenile offenders (*Kent v. United States*, 1966). Another landmark case that afforded juveniles the same rights as adults was *In re Gault* (1967).

In 1964, 15 year-old Gerald Francis Gault was taken into custody as a result of a complaint that he made lewd telephone calls to his neighbor. Gault was detained and tried without notice of the charges against him. He had no lawyer to represent him and was proceeded to verdict without any testimony of the accuser or rebuttal witnesses. Gault was cross-examined, convicted, and sentenced to a six year sentence at the Fort Grant Reform School in Arizona. Had Gault been convicted as an adult of the same
crime, he would have been subject to a small fine and/or two months in jail (Mlyniec, 2008).

As in Kent vs. United States (1966), the courts found that Gault was also denied his due process rights. As a result of Gault, juvenile courts were required to provide juvenile offenders their notice of charges, right to counsel, right to confrontation and cross-examination of witnesses, privilege against self-incrimination, and a right to appellate review in cases where the juvenile offender could face potential institutionalization (In re Gault, 1967).

Another significant case emerged in 1970 pursuant to the Court’s ruling in the case of In re Winship (1970). In 1967, a New York family court held an adjudicatory hearing of a 12 year-old boy who had been accused of stealing $112 from a women’s pocketbook. The 12 year-old was placed into a training school for 18 months, subject to annual extensions of his commitment until his 18th birthday. On appeal to the U.S. Supreme Court, the petitioner argued that the 12 “year”-old defendant should have been given the same rights as an adult, and specifically, that the standard of guilt beyond a reasonable doubt should have been used in the adjudication process. The New York family court denied the defendant’s Fourteenth Amendment right to expect proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he was charged (Winship, 1970). The Court agreed, and as a result, Winship afforded juveniles the right to be judged by the standard of beyond a reasonable doubt when charged with a violation of law that could result in their institutionalization. This case changed the previous standard of preponderance of the evidence. Based on this ruling, all juvenile
courts were now required to prove every element beyond a reasonable doubt of any criminal offense.

The three aforementioned cases significantly changed the direction of the juvenile justice system by requiring the courts to treat juveniles the same as adults with respect to constitutional rights at trial, or an adjudication hearing. While the courts clearly afforded juveniles constitutional protections previously enjoyed by only adults, the question emerged whether juveniles should be held to the same standards of accountability as adult offenders. This issue became very clear when the states began sentencing juveniles to the death penalty (*In re Winship*, 1970).

**Juvenile Death Penalty**

The courts addressed the issue of the juvenile death penalty in *Stanford vs. Kentucky* (1989). In this case, the Courts rejected the notion that the death penalty for juvenile offenders violated the Eighth Amendment. The Courts concluded that the “evolving standards of decency” were appropriately applied because they reflected the current conceptions of modern American society regarding to the execution of juvenile offenders who have committed murder. The Courts re-visited this same issue in *Roper vs. Simmons* (2005).

In *Roper*, the Courts considered the question whether it is permissible under the Eighth and Fourteenth Amendments to execute a juvenile offender who has committed a capital crime. In this case, the question of guilt or innocence was not the issue. Defendant Christopher Simmons was 17 years old when, with pre-mediation, he broke into the home of a woman, wrapped her in duct tape, and killed her by throwing her from
a bridge into a river. There was never any question of the heinous crime that was committed. Instead, in presenting their arguments in the *Roper* case, the petitioner outlined several precedent cases and court rationales for prohibiting the death penalty for juveniles.

This case was predicated from previous juvenile death penalty cases including *Thompson v. Oklahoma* (1987). In *Thompson v. Oklahoma*, the Court agreed that there is some age below which a juvenile’s crimes can never be constitutionally punished by death, and that through the use of the “evolving standards of decency” society was required to locate at which age death would be considered unconstitutional for juveniles (*Thomas v. Oklahoma*, 1989). *Thompson* defined the “death eligible” line at age 16 and concluded that no one under the age of 16 years old at the time of the criminal offense should be executed. In *Roper*, the Courts redefined the age requirement to 18, now mandating that no one under the age of 18 at the time of the criminal offense shall be executed. The main argument in *Roper* was that executing a juvenile was a violation of the Eighth Amendment’s clause of cruel and unusual punishment and thus went against the evolving standards of decency that mark the progress of a maturing society.

Considering the Eight Amendment is a significant factor in deciding the future of juvenile life without parole sentences, it is important that we examine in greater detail what the Eighth Amendment is and how it directly applies to life without parole.

**Eighth Amendment**

The Eighth Amendment to the U.S. Constitution states that no excessive bail shall be required, no excessive fines shall be imposed, and no cruel and unusual
punishment shall be inflicted (U.S. Const. art. VIII, § 1). The Eighth Amendment’s prohibition against cruel and unusual punishment comes from the concept that a punishment should fit the crime. This right was designed to prohibit the government from inflicting a disproportionate type of punishment by imposing sentences that are disproportionate to the crime committed. The Eighth Amendment mandates respect to the dignity of all persons, even those that have committed the most serious and violent offenses against society.

Although the Eighth Amendment prohibits the government from inflicting cruel and unusual punishments, the Courts have interpreted this right to have different meanings. The Courts have established two tests in determining whether a punishment is cruel and unusual and therefore is a violation of the Eighth Amendment. The first test evaluates the sentence by determining, on its face, whether the punishment was so disproportionate according to the “evolving standards of decency” that it violates the Constitution, thus providing a categorical exemption to the offender from the punishment. Examples of punishments that have been overturned for being unreasonable under this test are two Georgia statutes that prescribed the death penalty for rape and kidnapping (Coker v. Georgia, 1977). The second test the Court applies is a gross disproportionate review which is an evaluation of whether the sentence as applied to the particular offender for a particular offense violates the Constitution (Massey, 2006). The difference with this test is that even though a particular punishment may not be unconstitutional, the Courts can find that certain mitigating factors of a particular offender may warrant exemption from a punishment based on the specifics of that individual case.
In determining whether a punishment is so disproportionate as to be cruel and unusual under the Eighth Amendment, Courts refer to the “evolving standards of decency.” The courts evaluate the evolving standards of decency by determining whether the punishment is appropriate for the standards set in society at the time of the offense. In evaluating evolving standards of decency, courts evaluate legislative enactments (i.e., how many states currently utilize such a punishment) to identify a national consensus for or against a particular mode of punishment. The courts may also consult public opinion on the punishment, the practices of the international community, and also the culpability of offenders and whether a particular punishment is appropriately applied to the social purpose of the sanction (Massey, 2006).

The U.S. Supreme Court invalidated the death penalty in *Roper v. Simmons* (2005) for all offenders who committed their crimes prior to age 18. The Court deferred to juveniles’ lack of maturity and responsibility, greater potential for vulnerability to negative influence and peer pressure, and incomplete character development. In addition, the Court considered evidence of the evolving standards of decency which pointed to the fact that most states did not authorize a sentence of death for juvenile offenders, and of those that did, very few offenders were on death row for crimes committed as juveniles. In using the “evolving standards” the Court recognized that society as a whole did not support juvenile death sentences which ultimately resulted in the prohibition of this punishment.

In line with precedent cases that have afforded juveniles the same procedural rights as adults, and in the aftermath of the Court’s decision in *Roper*, in 2009, the U.S. Supreme Court accepted two cases for review and consideration on the issue of life
without parole for juveniles, *Graham v. Florida* (2008) and *Sullivan v. Florida* (2008). Most of the arguments presented in these cases by the petitioner mirror the same arguments and rationales used in *Roper* and other precedent juvenile death penalty cases.

Currently, 45 states have decided that juvenile offenders may be tried as adults and sentenced to life without parole. Thirty-eight of the 45 states that allow juvenile life without parole do so for non-homicide crimes. The U.S. has approximately 6,807 juveniles serving life sentences. Of that amount, 1,755 juveniles are serving life without parole sentences. However, there are only 111 juveniles serving life without parole sentences in the U.S. for non-homicide offenses (Annino, Rasmussen, & Rice, 2009). Based on this data, it is clear that juvenile life without parole sentences for non-homicide cases represent a very small percentage of all juvenile convictions. To better understand the legal arguments to prohibit juvenile life without parole, we need to further explore the current pending cases of *Graham* and *Sullivan*.

Pending U.S. Supreme Court Cases

“Graham v. Florida” (2008)

In 2003, at the age of 16, Terrance Jamar Graham participated with several other accomplices in the burglary of a restaurant and assault of an employee. Graham pled guilty to charges of armed burglary with assault and armed robbery. Under the plea agreement, Graham was sentenced to 3 years probation while the court withheld an adjudication of guilt. The court required Graham to serve 12 months in a pre-trial detention facility and he was subsequently released in 2004. Approximately 6 months
after his release, Graham allegedly was involved in another armed robbery and was subsequently arrested. In 2006, the court held that Graham had violated the terms of his probation and sentenced him to life without parole.

Florida courts are granted substantial discretion in deciding what sentences to impose pursuant to Florida state law. Since 1998, Florida has enacted the Criminal Punishment Code (CPC) which allows the courts to impose sentences above the maximum sentence range based on the type of offense committed (Graham v. Florida, 2008). The CPC replaced the previous system of statutory mandatory minimum sentences and now affords discretion to the courts to convict juvenile offenders with a life without parole sentence.

The arguments in Graham contend that life without parole sentences for juveniles are excessive and a violation of the Constitution (Graham v. Florida, 2008). In Graham, the petitioner references the same justification of Roper citing the three categorical differences between adults and juveniles: (1) an absence of maturity, (2) an increased susceptibility to external pressures, and (3) a less fixed and more transitory personality (Roper v. Simmons, 2005, pp. 569-570). The Courts concluded that these three differences are supported by undisputed scientific evidence (Steinberg & Scott, 2003), the laws of the States, the Court’s own jurisprudence, and common sense (Graham v. Florida, 2008). The petitioner in Graham further contends that juveniles possess less maturity and an underdeveloped sense of responsibility which many times results in “impetuous and ill-considered actions and decisions” (Johnson v. Texas, 1993, p 367).

Peer pressure is a contributing factor to adolescent delinquency and shows that juveniles are less responsible than adults because of peer influence. Indeed, in Roper,
the Court concluded that “juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment” (Roper v. Simmons, 2005, p. 570). The Court in Roper concluded that it was less supportable for even a heinous crime committed by a juvenile to be evidence of “irretrievably depraved character” (Roper v. Simmons, 2005, p. 570). Graham argues that the conduct of juveniles is not as morally reprehensible as the same conduct committed by adults (Graham v. Florida, 2008).

In referencing several research studies (Steinberg & Scott, 2003; Shepherd, 2005), Graham supports the claim that juvenile brains have not been fully developed resulting in comparative decision-making differences between juveniles and adults. Based on these studies, Graham concludes that there is overwhelming evidence that shows neurological explanations for the challenges adolescents have in cognitive functioning, exercising mature judgment, controlling impulses, weighing the consequences of actions, resisting the influence of peers, and becoming more responsible (Graham v. Florida, 2008, p. 43).

The line of reasoning in Graham further argues that the penological goal of retribution does not justify a life without parole sentence for juveniles who commit non-homicide offenses (Graham v. Florida, 2008). In Roper the Court explained that “whether viewed as an attempt to express the communities moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong for a minor as with an adult” (Roper v. Simmons, 2005, p.571). Graham concludes that the punishment does not fit the crime by imposing the harshest of
sentences on crimes that would not warrant that level of consequences (Graham v. Florida, 2008).

A juvenile who receives a life sentence without the possibility of parole forgoes any chances of rehabilitation. The Court agreed in Roper that any sentence that rejects rehabilitation of a juvenile is both excessive and ignores the fact that adolescents are more “malleable and capable of rehabilitation than adults” (Roper v. Simmons, 2005, p. 570). In a recent study, Laurence Steinberg & Elizabeth Scott concluded that an average juvenile’s potential for rehabilitation is greater than that of an adult who has committed a comparable offense. Graham outlines that juvenile criminal behavior is associated with risky behavior and not from a “deep-seated moral deficiency reflective of bad character” (Steinberg & Scott, 2003, pp. 1011-1012).

In an attempt to demonstrate the limited capabilities of the courts, Graham argues that courts lack the expertise as a matter of judicial discretion to distinguish between those juveniles who are capable of rehabilitation and those who are not (Graham v. Florida, 2008). Roper held that it was impossible to distinguish in a reliable way between the few juvenile offenders who may not be amenable to rehabilitation and the many who will “spontaneously desist or respond to sanctions or intervention” (Roper v. Simmons, 2005, pp. 572-573). Graham cites a study by Steinberg & Scott that concluded even expert psychologists cannot reliably “differentiate between the juvenile offenders whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption” (Steinberg & Scott, 2003, pp. 1014-1016).

In summary, Graham outlines the argument that life without parole for juveniles in
non-capital offenses violates the Eighth Amendment’s ban on cruel and unusual punishment. In *Sullivan*, separate arguments are presented which also argue that life without parole for juveniles for non-capital offenses violates the Eighth and Fourteenth Amendments.

**“Sullivan v. Florida” (2008)**

In 1990, Joe Harris Sullivan, and 2 other accomplices, broke into an elderly woman’s home and stole her jewelry and coins. Sullivan returned later that day and forcibly beat and sexually assaulted the elderly woman. Sullivan was tried as an adult because of prior felony convictions and sentenced to life without parole. Sullivan is now 34 years-old and is appealing the decision in the 2009-2010 U.S. Supreme Court session.

In presenting the Court with a summarized view of the argument, *Sullivan* presents the question: “Is Joe Sullivan’s sentence a cruel and unusual punishment prohibited by the Eight and Fourteenth Amendments” (*Sullivan v. Florida*, 2008)? *Sullivan* summarizes that in all of the United States, only 9 individuals are incarcerated under sentences of life without parole for crimes committed at or before the age of 13 years-old, Joe Sullivan being 1 of the 13 sentenced individuals (*Sullivan v. Florida*, 2008).

Using the same constitutional logic of *Roper v. Simmons* (2005), *Sullivan* explains that life without parole is similar to a death sentence and is different than most sentences of imprisonment which offers release or parole following a term of years served (*Sullivan v. Florida*, 2008). *Sullivan* describes further similarities between a
death sentence and a life without parole sentence by showing that both punishments impose a “terminal, unchangeable, once-and-for-all judgment upon the whole life of a human being and declares that human being forever unfit to be a part of civil society” (Sullivan v. Florida, 2008, p. 28). Sullivan further explains that children below a certain age are “unfinished products” and that their potential for growth and change is enormous (Sullivan v. Florida, 2008, p.28).

In an attempt to show similarities between juvenile death sentences and juvenile life without parole sanctions, Sullivan argues that the reasoning in Roper applies to young adolescents sentenced to life imprisonment without the possibility of parole. Roper argued that the “constitutional vice involved in punishing children with death was the impropriety of passing a final, condemnatory judgment on a still unformed human being” (Roper v. Simmons, 2005, p. 570). Sullivan references scientific studies (Geir & Luna, 2009 and Spear, 2000) which demonstrate the neurological, psychological and sociological differences between juveniles and adults. Additionally, Sullivan recognizes a critical Eighth Amendment analysis in one of these studies which argues that juveniles’ changeability, vulnerability to negative influences and lack of control over impulses and their environment, are significant scientific evidence that shows a clear difference between juveniles and adults (Geir & Luna, 2009).

It has been shown that hundreds of State and Federal laws recognize the special vulnerabilities and deficiencies of young adolescents. Some of these laws include driving privileges, voting age, marriage age of consent, and purchase ages of alcohol, fireworks and tattoos (Sullivan v. Florida, 2008). Sullivan also points out that adolescents are especially vulnerable and are provided heightened protections from
exploitation and abuse (*Sullivan v. Florida*, 2008). According to the petitioner in *Sullivan*, the constitutional logic of *Roper* is the main argument in justifying the reasons why a sentence of life imprisonment without parole on a 13-year-old child should be abolished. The main argument to the Court is that constitutional arguments in *Roper* were validated and the same findings should apply to juvenile life without parole sentences for non-homicide cases. *Sullivan* uses many of the same arguments as *Graham* in showing the reasons why life without parole for juvenile non-capital offenses violates the Eighth and Fourteenth Amendments (*Sullivan v. Florida*, 2008). Some of the strongest supporters of juvenile life without parole argue that the implementation of harsher sentences will reduce the violent juvenile crime rate and reduce recidivism based on the deterrence factor. In order to validate this argument, we must first examine the understanding of criminal deterrence and research the existing studies that have shown what effect harsher penalties has had on deterring adolescents from committing crimes.

**Deterrent Effect to Juvenile Delinquency**

In addressing the deterrent effect of harsher juvenile sentences, *Graham* argues that because juveniles have a diminished capacity for understanding their actions and choices, the risk of life without parole is unlikely to deter the criminal conduct. Indeed, research has revealed that the threat or reality of adult criminal punishment through waivers or transfers into the adult courts has no significant deterrent effect on influencing juveniles and repeat juvenile offenders, from committing a crime (*Fagan, Kupchik, Liberman*, 2003; *Lane et al.*, 2002; *Lanza-Kaduce et al.*, 2005). *Graham* references studies (*Singer & McDowall*, 1988, *Jensen & Metsger*, 1994) which show
that legislative changes mandating prosecution of juveniles in criminal courts and processing juveniles to adult courts had no significant effect on the deterrence of juvenile crime.

In a recent article (Redding, 2008) from the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the question is examined as to whether juvenile transfer laws, and hence adult punishment, are an effective deterrent to juvenile delinquency. In the 1980’s, many states passed legal reforms designed to deter and reduce serious and violent juvenile offenses. One of the reforms was the revision of transfers (or waivers) of juveniles from the juvenile court system to the adult courts. Some of these reforms lowered the minimum age for transfer, reduced judicial discretion, and expanded prosecutorial discretion (Fagan Zimring, 2000; Redding 2003, 2005).

The overall reason for the policy shift towards the increase of juvenile waivers was based on the assumption that more punitive criminal sanctions in the adult system would act as a deterrent to juvenile offenders and ultimately reduce juvenile violent crimes (Redding, 2008). Redding cites six large-scale studies that found higher recidivism rates among juveniles convicted of violent crimes and sentenced to the adult court system when compared with similar offenders tried in juvenile court (Fagan, Kupchik, Liberman, 2003; Lane et al., 2002; Lanza-Kaduce et al., 2005).

The results of these studies provide insight into why juveniles tried as adults have higher recidivism rates. Some of these reasons include the stigmatization and other negative effects of juvenile labeling, the sense of resentment by juveniles for being punished as an adult, and the learning of criminal behavior while incarcerated.
with adult offenders (Bazemore and Umbreit, 1995; Myers, 2003; Thomas Bishop, 1984; Winner et al., 1997). In summary, the petitioner for Graham and Sullivan used these examples of ineffective deterrence to show that the diminished capacity of adolescents leads to an underdeveloped ability to make rational decisions and therefore juveniles should not be held to the same standards as adults (Graham v. Florida, 2008 and Sullivan v. Florida, 2008). While there are many opponents to sentencing juveniles to life without parole, there exists a number of proponents who support this lifetime sentence for adolescents.

Support for Juvenile Life without Parole

Several Attorney Generals from various states responded to the petitioners of Graham and Sullivan. The respondents argued that outside the death penalty context, the Eighth Amendment strongly defers to state sentencing judgment. The respondents argued that the Court “does not sit as a ‘superlegislature’ to second guess the hard sentencing choices that fall to state legislatures” (Ewing v. California, 2003). The respondents also argued that death penalty cases cannot be compared with life without parole sentences. Quoting Woodson v. North Carolina, Justice Stewart once observed “death, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two” (Woodson v. North Carolina, 1976). The respondents argued that every state carefully considers juveniles’ age, maturity, and background before trying them as adults and stated the Eighth Amendment does not directly regulate state discretion over such matters (Harmelin v. Michigan, 1991).

The respondents argued that restrained review affords states wide latitude in
deciding how to severely punish violent juvenile crime. The Court has emphasized that, for Eighth Amendment purposes, “non-violent crimes are less serious than crimes marked by violence or threat of violence” (*Solem v. Helm*, 1983, pp 292-293). The respondents contest that states may decide that direct violent assaults against persons, even by juveniles, merit especially severe penalties (*Harmelin v. Michigan*, 1991). In summary, the States may reasonably conclude that the threat posed to the individual and society by violent crimes “is momentous enough to warrant the deterrence and retribution of a life sentence without parole” (*Harmelin v. Michigan*, 1991, p. 1003).

Proponents of life without parole for juveniles, including those sentenced in non-homicide cases, focused more on the legal aspects of such punishment and the rights of states to punish as they see fit. In short, respondents do not believe such punishments violate the Constitution, and hence, the review of such punishments are outside the purview of the federal judiciary. While some of the state arguments had legal merit, they failed to specifically address the difference in culpability between juveniles and adults. In comparing both sides of the argument for juvenile life sentences, inevitably the Court’s ultimate ruling in these cases will have an influence as to the direction of juvenile sentencing.

**Future Direction of Juvenile Life without Parole**

In *Graham v. Florida* and *Sullivan v. Florida*, the U.S. Supreme Court will determine whether sentencing juveniles to life imprisonment without the possibility of parole for non-homicide offenses violates the U.S. Constitution. In *Sullivan*, the Court will also examine whether it has jurisdiction to hear a case that a state appellate court
had previously dismissed on independent state law grounds. The Court’s decision will ultimately have a far reaching effect on juvenile offenders, prosecutors, judges and the juvenile justice system (Graham v. Florida, 2008 and Sullivan v. Florida, 2008).

While juvenile life without parole convictions represent a small percentage of offenders, a Court ruling prohibiting life without parole sentences for juvenile offenders for non-homicide cases could open up a Pandora’s box for deciding future juvenile sentencing issues. One example would be that should the lifetime sentences for juvenile non-homicide cases be abolished, the Courts may soon be willing to reconsider harsher sentences across the board, for example, lengthy adult prison sentences as a result of adult court waiver or blended sentencing. Historically, precedent cases have had major influence in evolving change within our legislative system. Depending on the Court’s ruling, the effects may swing the pendulum back towards a more rehabilitative approach that recognizes the harmful effects of adult sanctioning of juvenile offenders.

Petitioners for Graham and Sullivan have argued that juveniles have distinct psychological and social characteristics and that a life without parole sentence would not serve any standard goal of punishment (Graham v. Florida, 2008 and Sullivan v. Florida, 2008). In the U.S. Supreme Court brief for Graham, the petitioner outlines the reason why life without parole for juveniles violates the Eighth Amendment’s Proportionality Principle. For several decades the Courts have recognized the differences between adults and juveniles when evaluating culpability and proportional punishment (Thompson v. Oklahoma, 1987). In Carey v. Population Servs. Int’l, the Courts concluded that the “law has generally regarded minors as having a lesser capability for making important decisions” (Carey v. Population, 1977). In Roper v.
Simmons the Courts recognized that juveniles under the age of 18 had a diminished culpability by reason of youth and immaturity (Roper v. Simmons, 2005, p.571).

The Eighth Amendment prohibits states from inflicting “cruel and unusual punishment” upon a criminal defendant. Over the last 3 decades, the U.S. Supreme Court has refined its jurisprudence regarding whether a specific sentence constitutes cruel and unusual punishment. Precedent Court cases have created categorical rules regarding the classes of defendants, including juveniles, who are exempt from the death penalty. To prove an Eighth Amendment violation, a petitioner must prove that the sentences imposed raise an inference of “gross disproportionality” (Harmelin v. Michigan (1991). Graham and Sullivan present the Court with an opportunity to exempt juveniles from receiving life without parole sentences for non-homicide offenses. The cases also provide an opportunity to expand the Eighth Amendment’s “cruel and unusual punishment” clause to juvenile life without parole sentences for homicide cases. Indeed, the findings of the Court regarding this issue will ultimately have an effect on future legislative enactments in regards to juvenile sanctions as well as how the States are able to address punitive sanctions for serious violent juvenile offenders.
CHAPTER 5

THESIS OVERVIEW

The main purpose of this thesis was to summarize the history of life without parole for juveniles, and present both sides of the arguments for and against this life time sentence imposed on adolescents. To this end, this thesis has focused on U.S. juvenile court history, evolving legislative enactments, juvenile precedent cases, and the direction of life without parole sentences for juveniles in the U.S. In this final chapter, it is also important to evaluate the practices of the international community in regard to their practices of life time sentences for juveniles. The importance of reviewing international processes, in regards to juvenile justice systems, is to compare what different types of juvenile systems exist and examine what societal impacts are found in regards to crime rates and recidivism.

International Views for Life without Parole for Juveniles

Juvenile Life Sentences in Other Countries

The United States is one of only a handful of countries that invoke juvenile life without parole sentences. Most countries expressly prohibit juvenile life sentences, and in the limited number of countries whose penal codes allow for such sentences, life without parole sentences are never used (Quinn, 2007).

According to Amnesty International and Human Rights Watch, only four countries currently have youthful offenders serving a life without parole sentence; (1) South Africa with 4 juveniles, (2) Tanzania with 3 juveniles, (3) Israel with 7 juveniles, and (4) the United States with 1,755 juveniles (Huitzil, 2005). It should be noted that South Africa
and Israel have since allowed parole review of these juvenile defendants, leaving the United States as the only country that punishes juveniles so severely on a regular basis (De La Vega, 2008). Based on these statistics, it is obvious that the United States stands out as the country that currently imposes the most juvenile life sentences in the world based on reported statistics. Some critics have even argued that because the imposition of juvenile life sentences is prohibited by international law, The United States should discontinue this practice.

**International Law**

In 1990, the Human Rights Committee (the U.N. body charged with overseeing the implementation of the International Covenant on Civil and Political Rights) found that sentencing juveniles to life without parole sentences was not in compliance with Article 24(1) of the Covenant, thus making it a violation of international law to impose such sentences (Huitzil, 2005). Conversely, critics have argued that imposing life sentences in the U.S. does not violate international law because (1) no relevant treaty is binding on the United States; (2) no customary norm exists in barring the execution of juveniles; and (3) even if such a customary norm were found to exist, the United States is not bound by it on an account that it has persistently objected to the norm during its crystallization (Bradley, 1997). While many critics argue the legality of violating international law, there are no real mechanisms in place that would enforce any international treaties or covenants in the U.S. In summary, most of the international communities oppose juvenile life time sentences, while the United States continues to function independently in deciding how to administer juvenile criminal justice.
International Juvenile Justice and Rehabilitation Models

The German model of juvenile criminal sentencing is an example of a juvenile justice system focused on rehabilitation. In the 1970s, Germany abolished its traditional sentencing for juveniles and created a rehabilitation system that gave way to alternative measures including probation, suspensions, community service, and system-of-day fines (De La Vega, 2008). As a result of this change, incarceration of juveniles in Germany decreased by more than 50% between 1982 and 1990 (Pfeiffer, 1996). The main focus of the German juvenile criminal justice system is to educate juvenile offenders and provide special sanctions or provisions that embrace rehabilitation. Only when rehabilitation approaches fail does Germany impose incarceration. Even with the penalty of imprisonment, Germany continues to incorporate rehabilitative measures within their confinement centers (Pfeiffer, 1996). Germany claims their rehabilitative approach, and the abolishment of death and life without parole sentences for juveniles, has resulted in low recidivism rates for their juvenile offenders (De La Vega, 2008). In summary, the Human Rights Council has recognized Germany as a model system of alternative sentencing structure focusing on rehabilitation that has had significant success in lowering juvenile recidivism (De La Vega, 2008).

New Zealand began utilizing the approach of restorative justice in 1989 with the passage of the Children, Young Persons, and Their Families Act (Children, Young Persons, and Their Families Act, 1989). The main goal of this Act is to decide the best course of action for the juvenile offender by using 3 integral components. First, the courts create a family group conference which includes the courts, law enforcement, the government, the victim, and the offender. The first component in this conference is to
determine whether or not the juvenile offender admits to the offense. Second, information is shared at the conference about the nature of the offense, the effects this offense will have on the victim, the reason for the offense, criminal history of the juvenile defendant, and other information relevant to the case. Third, the participants decide on the outcome or recommendation (Morris, 1998). The goal of this system is to focus more on rehabilitation, as opposed to punitive sanctions. Based on the results of this system, New Zealand has experienced a significant reduction of juvenile incarcerations and decreased recidivism rates (Morris, 1998). The significance of this comparison to the current U.S. system is that harsher penalties (i.e. life without parole) will not always result in lower crime or reduced recidivism for the juvenile population. Overall, these international studies show that a rehabilitative system may be more beneficial in reducing crime and ultimately lowering violent crimes and other serious offenses by juveniles.

Thesis Overview

History of U.S. Juvenile Justice System

This research has focused on the history of the U.S. justice system, including historical accounts leading up to the creation of the first juvenile court in 1899, in Chicago, Illinois. The goal of such a broad initial focus was to clearly establish the roots of juvenile justice in America so as to help frame and guide the issue of life time sentences for juvenile offenders, the focus of this thesis. It is clear from this focus that the original goals for a separate U.S. juvenile justice system were rehabilitative and restorative in nature.
The original juvenile court system laid a distinct foundation in separating juveniles from adults. As society has evolved over the century, the political environments have also changed and led to a juvenile justice system, that for the most serious and violent offenders, resembled something more like adult justice than the rehabilitative juvenile court founded in 1899. A driving force in the legislative changes over time has been directly related to the dramatic increase of juvenile violent crimes in the 1980s and 1990s. The increase in media influence has also been a driving force in influencing public perception and fueling the fear of violent crimes despite the fact that such crimes are relatively rare. An analysis of juvenile court history is beneficial in understanding how the current juvenile justice system was created and how to possibly predict the future path that the juvenile courts may take.

Current Juvenile Justice System

In comparing the differences between the previous and current juvenile justice system, this study was guided by the blurring of the lines between juvenile and adult justice. The current juvenile court system, particularly for serious and violent juvenile offenders, is less concerned with rehabilitation and reformation and instead has focused on passing judgment and sentencing based on punitive sanctions. New legislative enactments have afforded the juvenile courts and prosecution the ability to impose harsher sentences, and in some cases preclude any chances of rehabilitation for serious violent juvenile offenders.

Juvenile waivers have given courts more flexibility to send violent juvenile offenders into the adult system to face adult penalties. Blended sentencing has provided
additional mechanisms in allowing additional punishment, including that previously reserved for adult offenders or adult court waived juvenile offenders. Indeed, the findings of this thesis have clearly shown a changing trend towards a more punitive system in which juvenile sentences have become indistinguishable from adult sanctions. Although rehabilitative juvenile justice still exists for most juvenile offenders, this is not the case for serious and violent delinquents.

**Juvenile/Adult Differences**

In researching juvenile life sentences, this thesis has examined the differences that exist between adolescents and adults. These differences constituted the foundation for arguments against life sentences for juvenile offenders in the two cases currently pending in the U.S. Supreme Court. Several studies have been examined that have identified psychological and neurological differences between juveniles and adults (Steinberg & Scott, 2003; Locke, 1979; Brink, 2004; Mcnamee, 2006; Sprinthall & Collins, 1995; Steinberg & Silverberg, 1986; Costanzo & Shaw, 1966). Some of the notable differences found suggested juveniles have a diminished maturity level, are more susceptible to peer pressure, and have an underdeveloped brain compared to adults (Steinberg & Scott, 2003; Locke, 1979; Bennett & Abigail, 2006). All of these findings suggest that juveniles have a distinct difference in their decision making abilities when compared with adults and such a difference questions the utility of punishing such offenders as adults.
Issues of Juvenile Rehabilitation

This study has shown that the original design of the juvenile criminal justice system was for the purposes of rehabilitation. Research has shown that the juvenile system has gone from a rehabilitative model to our current system which has become more and more adult-like. One of the most compelling arguments in this thesis is the fact that previous studies have shown that the increase in harsher sentences for juveniles has actually increased the juvenile recidivism rate, among other deleterious personal consequences, and imposed increased financial burdens on state and federal budgets (Scott, 2006). The irony is that the rationale from our legislatures in creating harsher sentences for juveniles was for the purpose of decreasing the juvenile crime rate and reducing recidivism of juvenile offenders.

This study has also briefly examined in other countries that have changed their juvenile justice system from a retributive-based system to a more rehabilitative model. The results of these studies have suggested rehabilitation models may be more beneficial to societies in treating juvenile offenders, reducing recidivism, and decreasing the costs of incarceration. In summary, this thesis has shown that juvenile life without parole affords no chance for rehabilitation, thus taking away any chances of allowing the juvenile offender to receive treatment, and ultimately become a contributing member of society once again.

Legal Implications

Precedent legal cases have been examined in this thesis to show the evolving cases that influenced the change in the juvenile justice structure. Some of the most
significant cases that evoked change included *Kent v. United States*, 1966, *In re Gault*, 1967, and *In re Winship*, 1970. In these landmark cases, Court mandates were created which forced the juvenile courts to provide most of the same procedural protections as adults, and hence, transformed a once benevolent juvenile court to simply a limited version of the adult justice system. Among other issues, this change took away juvenile courts’ autonomy in deciding the appropriate sentences for juvenile offenders, including rehabilitative treatment programs. In addition, this change fueled legislative enactments to create harsher sanctions, including juvenile life without parole.

Another notable case that was examined was *Roper v. Simmons*, 2005, which ultimately abolished the death penalty for all juveniles under the age of 18 years old. The significance of this case was that the Court concluded that juveniles were distinctly different from adults and concluded that the death penalty violated the Eight Amendment right to protection from cruel and unusual punishment. The Court concluded that the punishment was disproportionate to the crime based on the offender’s adolescent status. Based on the Court findings in *Roper*, constitutional arguments were raised as to the legitimacy of juvenile lifetime sentences. *Graham* and *Sullivan* became the “beacon of hope” for opponents of juvenile life sentences when the Courts accepted their cases for review.

Some of the most significant arguments from the petitioners in these cases outline juvenile diminished capacity, lack of deterrence based on juvenile crime rates and recidivism, and the violation of the Eighth and Fourteenth Amendments. In addition to the study of opposition for life without parole, this thesis has also examined the arguments of those who support sentencing juveniles to life sentences. Most of the
support for this life time sentence came from State Attorney Generals throughout the country.

In a brief responding to *Graham* and *Sullivan*, the supporters of life without parole cited several arguments outlining the reasons why States should maintain the right to sentencing juvenile life sentences. Some of the most notable arguments presented included issues that death penalty cases could not be compared with life time sentences and that juvenile life time sentencing was not prohibited by the Eight Amendment; citing that the States have the right to impose sanctions that warrant the deterrence and retribution of particular offenses (*Harlem v. Michigan*, 1991). It should be noted that proponents for juvenile life sentences did not offer evidence that showed juveniles had the mental capacity to make rational decisions during adolescence—clearly an important part of the Court’s decision in *Roper*. In summary, the overall legal arguments presented in this paper showed stronger support for reasons why the juvenile life time sentences for non-homicide offenses should be abolished.

State Impact on Pending U.S. Supreme Court Review

*Effect of Abolishing Non-Homicide Juvenile Life Sentences*

States will most certainly have some residual effects should the Courts decide to prohibit life without parole sentences for juvenile offenders who have committed non-homicide cases. Previous research has shown that currently 111 juveniles are serving life without parole sentences for non-homicide offenses (Annino, Rasmussen, & Rice, 2009). When compared to the vast number of juvenile inmates within the United States, 111 individuals seems insignificant in comparison. Arguably, the impact of such a small
number would be minimal, and it is not even clear if the Court’s decision would be retroactive, thus providing relief to the 111 offenders currently serving life without parole sentences for crimes committed as juveniles. The major impact that the Court’s decision would have in prohibiting this sentencing practice would be to the juvenile and adult court systems, as well as state legislative bodies. Adult court systems trying juvenile offenders will be forced to re-think their punitive approach in sentencing offenders whom might have previously been prosecuted as life without parole cases.

While a life sentence would prohibit any chance for rehabilitation, abolishment of this practice might present new arguments that lean more towards a rehabilitative and restorative approach. It should be noted, however, that the harsher sentences imposed on juveniles include mostly violent and serious offenders. The majority of juvenile sentences are still focused on rehabilitation and re-integration back into society. Although, currently, the United States does have the highest juvenile incarceration rate in the world, which has led to prison overcrowding, financial burdens, and increased recidivism rates (Annino, Rasmussen, & Rice, 2009).

Currently, Graham and Sullivan have grabbed international attention, which has resulted in mounting pressure to overhaul the U.S. criminal justice system. In addition to the media attention these cases have generated, the current economic crisis may play a significant role in creating new ways to reduce our government costs by reducing the number of juvenile inmates. In summary, the Court’s ruling to prohibit juvenile life without parole sentences could in fact result in a domino effect that may have far reaching implications in future legislative enactments and sentencing structures.
Effect of Keeping the Non-Homicide Juvenile Life Sentences

Arguably, both sides of the life without parole cases have their own agendas in fighting for or against juvenile life without parole. Should the Court decide to maintain the current practice of life time sentences for juveniles, some may argue that it is business as usual. One of the effects that a ruling to keep this sentencing practice could have is on the increase in harsher penalties for juvenile offenders. If the Court decides that life without parole for juvenile non-homicide offenders does not violate the Eight Amendment, this could potentially drive an increase in additional juvenile life without parole convictions and sentences.

We have seen throughout the decades how the fear of increased juvenile violent crime increases has spawned new laws to include juvenile waivers and life without parole sentences. We have also seen different Court cases that have had unintended consequences in developing a punitive approach to our juvenile justice system, as opposed to the rehabilitative modality. Another unintended consequence could be the increase in our already financially strapped governments. The overall effects of keeping juvenile life sentences would be that it will be much more difficult for the lower courts to prohibit such sentencing practices based on case precedents.

Opponents of juvenile life without parole sentences argue that examples of juvenile rehabilitative models in other countries provide strong evidence that the rehabilitative approach for serious and violent offenses have a more significant effect in reducing juvenile crime and recidivism (De La Vega, 2008). It is clear that a great majority of the international community condemns the sentencing of juveniles to life without parole sentences and has continued to apply international pressure to abolish
this sentencing practice. While a Court decision abolishing juvenile life without parole sentences for non-homicide offenses would not have any significant effect on the international community, the U.S. would receive overwhelming praise in recognizing the additional steps taken towards the abandonment of what is viewed, by most other developed countries, as barbaric penalties for our youth offenders. Furthermore, in recognizing the courts use of the “standards of decency” in evaluating societal standards, the fact that the U.S. is the only country in the world that continues to impose life without parole sentences on juveniles may carry a strong argument to the Court in reasons to abolish this practice.

Contribution of Thesis

The overall goal for this thesis was to evaluate all of the evidence presented that would show just cause to keep or abolish juvenile life without parole sentences for non-homicide offenses. This thesis has examined the evolution of the U.S. juvenile justice system which has shown the ongoing change in policies and ideologies in reference to harsher penalties for violent juvenile offenders. It was found in this research that most of the increase in harsher penalties, including juvenile life-sentences, has mostly only applied to serious and violent juvenile offenders. It is clear from the recent legislative changes in sentencing structures that society has a minimal tolerance for juvenile violent behavior and has supported tougher sentences in dealing with adolescent crime in America. While the U.S. stands firm in its punitive approach towards violent crimes, the international community has taken a much softer approach, which has ultimately led to the abolishment of juvenile life without parole sentences.
The important elements found in this thesis, in regards to juvenile life time punishments, was the evidence that juveniles do not process information like adults and clearly have a diminished capacity in fully understanding the consequences of their actions. Another significant issue identified in this study was that the global trends in juvenile life-time sentences demonstrate that society no longer supports this type of punishment. In deciding the question of whether to prohibit juvenile life without parole sentences for violent offenses, the Courts will have to decide if the international trend in abolishing this sentencing practice would be considered a change in societal standards when using the “standard of decency” principle. Ultimately, this thesis has provided insight into deciding whether a life time sentence for juveniles is excessive punishment and whether there is legal justification to impose such punishments on juvenile violent offenders.

The significant contribution of this thesis is that it was able to show evolution of life without parole in our juvenile system, including the unintended consequences that harsher penalties have brought. Primarily, this research has shown that harsher penalties do not equal lower crime rates, juvenile retribution does not allow rehabilitation affording reintegration back into society, and constitutional violations may have occurred in our overzealous attempts to punish the guilty.

Based on all the literature and evidence presented in this thesis, in conjunction with a legal analysis of precedent cases, I believe it is argued that the Court should abolish life without parole for all non-homicide cases involving juvenile offenders. The strongest argument is that juvenile offenders, even the most serious and violent, have limited capacity in understanding the full consequences of their actions. Because a
juvenile life time sentence is absolute with no chance for change, this punishment may be too harsh for any non-homicide related offense, considering the mitigating factor of juveniles’ young age and immaturity, susceptibility to peer pressure, and their general diminished capacity.

In conclusion, when comparing both sides of the arguments, the evidence presented in this thesis has shown much stronger support for reasons why juvenile life without parole sentences for non-homicide offenses should be prohibited instead of retained. In Lewis Carroll’s words from Alice in Wonderland, Alice asks, “would you tell me, please, which way I ought to go from here?” The Cheshire Cat responds, “that depends on where you want to get to” (Carroll, 1941). Perhaps the Court’s ruling in favor of prohibiting juvenile lifetime sentences for non-homicide cases will pose the question to society, “where do we go from here in deciding juvenile punishment?” The answer will ultimately be which direction society chooses to go in addressing punishment for serious and violent behavior committed by juvenile offenders.
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U.S. Const., amend. VIII, § 1


